

## STERLING PLANNING BOARD MINUTES – February 13, 2019

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**Present:** John Santoro ~ Chairman  
David Shapiro ~ Clerk  
Russ Philpot ~ ANR Agent  
Craig Miller ~ Member  
Betty Kazan ~ Administrative Assistant

**Absent:** Michael Pineo – Vice Chair & E.D.C. Member  
Domenica Tatasciore – Town Planner

Mr. Santoro called the meeting to order at 7 P.M. in Room 202 of the Butterick Building. He announced that the meeting was being recorded by the Sterling/ Lancaster Cable TV and audio recorded by the Planning Board.

### **Minutes**

Mr. Shapiro moved that the Board approve the minutes of January 9, 2019 as printed. Mr. Miller seconded the motion. The motion passed unanimously.

### **Town Planner's Report/Discussions**

The Town Planner was not in attendance.

### **Warrants & Payroll**

Board Members reviewed a warrant for Haley & Ward (Stone Ridge & 150 Clinton Road).

### **Chairman's Report/Notices/Discussions**

#### **Meet with Finance Committee re: FY 20 Budget**

Mr. Santoro mentioned that the Planning Board has a meeting with the Finance Committee on March 2, 2019 at 8 a.m. to discuss the FY20 Budget. Mr. Santoro will not be able to attend. Mr. Pineo and Mr. Shapiro will be attending.

Mr. Santoro acknowledged receiving three letters of complaint relative to the Planning Board's meeting of January 9<sup>th</sup>. Mr. Santoro will take their opinions as constructive and will try to do a better job. Mr. Santoro also apologized if he has offended anyone. Mr. Santoro considered this matter closed and move forward.

#### **48-50 Worcester Road concerns of Lt. Kokernak**

Mr. Santoro mentioned that the Board had received a letter from Lt. Kokernak expressing his concern regarding the construction of a loading dock which should have gone through a building permit review process as well as a site plan review.

Mr. Santoro explained that the Site Plan which was submitted for this project had been withdrawn without prejudice about a month ago. So this Board is not involved at all at this point.

Mr. Philpot mentioned whether a building permit is pulled or not is none of this Board's business. What is the Boards' business is what is going on down there. The site plan review is triggered at 500 square feet. He went on to say after reading Kokernak's letter he checked on the Town's GIS system to get an idea of the size of the back building on the lot which is undergoing

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a change of use. As far as he could tell using the measurement tools on the GIS. He believed it was well over 500 square feet and believes the loading dock itself is over that. How can a contractor just go ahead without permits or anything?

Mr. Santoro stated that all contractors have licenses and know the requirements. He further stated that it is not this Board's issue because they withdrew without prejudice and it was crystal clear what the rules were.

Mr. Philpot asked how such a large project on a main drag can go so long without being noticed.

Mr. Santoro asked Lt. Kokernak how he discovered this. His response was he was driving by and pulled in and was surprised at what he saw. Thus, it triggered the email he wrote.

Mr. Santoro asked Ms. Page of the Building Department if she knew the status of this project. She stated she doesn't really know where it stands right now and that they did all the work without a permit.

Mr. Santoro said there was some confusion over whether there was a cease and desist order. So, he does not know where the matter is.

Mr. Philpot stated at this point there is nothing for this Board to do and it is up to our (the Town's) enforcement officer. Mr. Santoro concurred.

### **STM/ATM warrants**

Open January 24<sup>th</sup> and both close on March 13, 2019 at 2 p.m.

### **Administrative Assistant's Report/Notices**

#### **CPTC Training**

Ms. Kazan reminded the Board that the annual CPTC Training registration is open if any Board Member wishes to sign up for any of the workshops.

#### **Board Stipends**

Ms. Kazan inquired as to when the Members would like her to process a warrant for their FY19 Stipends. Board Members agreed that a warrant for their stipends would be appropriate in May.

### **2018 Annual Town Report**

Ms. Kazan asked the Members for their input on the draft of the Planning Board's Annual Town Report for 2018. She indicated that she would be presenting the final draft for their approval at the February 27<sup>th</sup> meeting as the deadline for submission to the Town Clerk's office is March 1, 2019.

Ms. Kazan mentioned that she was excited about this year's annual report as the Board has accomplished quite a lot: Held twenty-three meetings, three Public Hearings, approved ten ANR Plans, Approved one Definitive Subdivision, approved six Site Plans and accepted and closed out eight As-Built Plans. Kudos to the Board. The Board recognized Ms. Kazan for doing a tremendous job ensuring all this activity was accomplished smoothly.

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### 167 Clinton Road As-Built – Sterling Ice Cream Bar

7:20 p.m.

Mr. Philpot explained that he was the designer of the Bagel Shop many years ago. He had a contract for construction of the Bagel Shop. He had nothing to do with the Site Plan nor did he appear in front of the Planning Board at the time when the applicant went through the Site Plan review. In spite of the fact that it has been a number of years and he is well beyond any conflict of interest, he will, nonetheless, recuse himself from this discussion.

(Mr. Philpot left the meeting room.)

Mr. Santoro acknowledged the submission of the As-Built plans from Sterling Ice Cream Bar. Plans prepared by Ronald A. Simpson, PLS, Tewksbury, MA, Dated December 31, 2018, Job #18-1120. Plans were prepared for George Katsiaunis, 167 Clinton Road, Sterling, MA 01564.

The Board agreed to follow the procedure in place and refer the As-Built documents to Scott Miller for the necessary review.

Mr. Shapiro expressed concerns over the cost of the review. He was concerned that the cost might exceed the balance in their Review Fee Account.

Ms. Kazan will contact Scott Miller tomorrow and inquire about the cost for this review.

Joe Curtin of Fox Run Road assisted the owners in obtaining their As-Built Plan, arranged for the Professional Land Surveyor to go out to them and he as a Professional Engineer wrote the Plan existing conditions. The one thing with the Site Plan, besides the parking, the lighting and the drainage, there was not any other pertinent work done on that. He summarized this in a letter to the Board which accompanied the Plans. He recommended that someone review it. In his professional opinion he would follow the Board's procedure.

7:26 p.m. Mr. Philpot returned to the meeting.

### Discuss comments made at a recent BOS meeting & potential Open Meeting violation

Mr. Philpot received three phone calls from individuals telling him that he should watch the February 6, 2019 Board of Selectmen's meeting and directed him to a particular section regarding the discussion of the Earth Removal Bylaw Review Committee.

Mr. Santoro stated that he personally was at that meeting for the discussion of recreational marijuana and for which this Board held a hearing for the prohibition of recreational marijuana. He was at the meeting for this discussion only and left the meeting right after.

Mr. Philpot suggested that all Board Members watch the video of this BOS meeting. At one point in the discussion, Joe Curtin got to the podium. He was part of the working group that the Planning Board, Earth Removal Board and Zoning Board had created. Mr. Rivers is here in attendance and he was a member of that group as well. In the conversation between Mr. Curtin and Mr. Lane, (at 3 hours 9 minutes 57 seconds) Mr. Lane stated that the Planning Board was invited to get involved. At this point they were talking about modifying something that had been

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initially created by the original working group. At 3 hours, 10 minutes, 48 seconds, Mr. Lane said - talking about the Planning Board, 'if they don't come it is because they are spiting me'. And at 3 hours, 11 minutes, 38 seconds, Mr. Lane said 'if we take all the words from the original document and put them in to what we are creating, and they (the Planning Board) refuse it, it is only out of spite'.

Mr. Philpot stated that the Open Meeting Law says you cannot discuss the character or reputation of individuals in an open public meeting, this is all Executive Session stuff. Mr. Lane assigned to us that we are all spiteful. Mr. Philpot stated that this is over the line, calling another Board spiteful. By the way, the comments that he made frame it in such a way that whatever is presented to us we will certainly consider because that is our job but remember if they don't accept it, it is because they are spiteful. So, Mr. Lane presumes that whatever is submitted, we could not possibly find any issue with and it is going to be pristine and perfect. It is an awfully big presumption for anyone to make and then saddle us with being spiteful not once but twice, he (Philpot) has a problem with that.

Mr. Lane impugned our character by labelling us as spiteful.

Mr. Santoro stated that he was not asked to stay at the meeting even though they were going to discuss the Planning Board.

Mr. Shapiro made the point that during this discussion Mr. Lane indicated that no one from the Planning Board was in attendance. It seems as though Mr. Santoro should have been asked to stay on. He agreed that Mr. Lane's statements were a very poor reflection on the Board's character and not professional to call other Board names. Mr. Shapiro felt Mr. Lane implied that this Board is trying to hide from the citizens of Sterling what we are trying to do. Absolutely not. We were trying to present a Bylaw written very well which can go into the bylaws of the Town and at the same time have regulations that can be amended as times and ages change without having to wait for an Annual Town Meeting. At the same time Mr. Lane says that is trying to hide from the citizens of Sterling. Mr. Shapiro finds this more offensive.

Mr. Philpot stated that Mr. Lane told him that two members of that group (the Working Group) told him that one of the goals or purposes was to avoid public scrutiny. Joe Curtin who was standing at the podium pressed back on that and he said I can quote them verbatim. Mr. Philpot was not part of that group. Mr. Miller and Mr. Shapiro represented the Planning Board.

When Mr. Lane opened up his report on his committee, he started with comments about emails and discussions going back and forth and many of them he finds to be inflammatory and not true.

Mr. Philpot stated that with respect to emails and anything related to the Earth Removal Bylaw Review Committee, the only time that he took part in any email was when there was an announcement sent out by Mr. Perry that the BOS is putting this committee together. Mr. Philpot sent an email asking why is there a committee being created to do something that has already been done. Their response was he recalls, their goal is to get something ready for Town Meeting. He then replies that was not what he had asked. Mr. Lane then replied in his opinion the working group violated the Open Meeting Law. Mr. Philpot's response was thank you for the information, I am pleased to see you are a stickler on the OML.

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Selectwoman Maureen Cranson stated she was obviously at that meeting too and she has to be honest she doesn't get all that involved in the Earth Removal and what has transpired other than the fact she knows that Mr. Fox and Mr. Curtin have worked on it as well as Mr. Shapiro. She was not aware that Mr. Miller was also involved. Her understanding is what they are working on now is working with what was submitted and just tweaking it with input from Conservation and Building Inspector and all of those people are going to be involved.

Ms. Cranson cannot speak on behalf of Mr. Lane but she obviously missed that part about being spiteful. But Mr. Lane did acknowledge how hard they had worked on the ER Bylaw and they had gotten the Planning Board to sign on as well. She agreed the reference to spiteful was the wrong thing to say in any public meeting.

Ms. Cranson asked can we stop all of this. In some way, shape or form can we stop all of this. Not just the Earth Removal but all of it. We need to work together. Sterling is doing some really good things right now. You guys are working hard as Ms. Kazan previously mentioned in you 2018 Annual Report, you have goals and aspirations on your agenda tonight as is the Board of Selectmen. The bottom line is we need to work together. It is not just the BOS and Planning Board, it all these Boards. She asked how can we fix this disconnect? She didn't expect the Board to give her feedback tonight but asked the Board to think about this moving forward.

She stated that everyone wants the same thing to move Sterling forward and be responsible to the taxpayers.

Mr. Santoro stated that this Board has worked very difficult times and hours. It seems like we have been the can that keeps getting kicked around for all the good that we have done. And the Board is not recognized for any of it. This Board is a lot stronger than its predecessors and has moved Sterling forward. This Board has never been acknowledged for all the good work it does.

Mr. Philpot out of respect for the Board of Selectmen offered comments to the Chair. With respect to an agenda item, we now have confirmation from a Selectman that we were referred to as spiteful and further acknowledgement that it was wrong. The Open Meeting Law does not have a lot of teeth. There are no fines, no criminal actions, so on and so forth. He asked for this agenda item and thanked the Chair for putting it on. The reason is because Mr. Lane is far over the line and hopes the Board agrees. Mr. Miller when you watch the video I believe you will also agree, that our Board has been insulted, our character has been impugned in a public meeting. There are two solutions here that he sees. One is we as a Board vote hopefully that there has been an Open Meeting Law violation against the Board of Selectmen. The reason it is the whole Board is because Mr. Lane spoke the words and sitting beside him were two Selectmen who did not say anything. This isn't the first time the Board's character has been impugned. Last summer, it was inferred that the Planning Board had some sort of hang up with women and that we preferred some sort of old boy network. Neither of which is true. The other solution in lieu of an Open Meeting Law complaint is that we get an apology from the Board of Selectmen. An apology in his mind should be in two forms; first, an apology should be given in the same arena, in the same format in which we were impugned. That means in a public meeting with the cameras going and secondly, because it is their habit to send letters to us individually, I

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would like to have a letter of apology. Otherwise, we have no choice than to go ahead with an Open Meeting Law complaint.

Mr. Philpot addressed Ms. Cranson's inquiry about how can we work together, Here's an example of 'stay in our lane'. It is the Planning Board statutory authority. Over the weekend he struggled through a few of the BOS Meetings. Back in July, at a Board of Selectmen's meeting, Mike Pineo at the podium very clearly and sternly said that the Master Plan is the statutory authority of the Planning Board. The comment from Selectwoman Cranson was that's fine but according to the Secretary of State's office there is nothing wrong with us moving forward with the Master Plan. Something to that effect. This probably is true but it doesn't negate or deny our statutory authority.

Mr. Santoro stated this was not on the agenda so this discussion would need to stop. Ms. Cranson stated she would like to be on the next agenda to discuss this further.

Ms. Cranson stated that since Mr. Philpot would like a letter of apology that maybe he would like to address the complaint letters you have gotten. Mr. Santoro stated that he had already stated earlier in the meeting that there would be no further discussion. Ms. Cranson stated that if one person is going to have to apologize for something that was done at a meeting then another person should do the same.

Mr. Kilcoyne stated that the only reason the Selectmen commented on the complaint letters is because they were addressed to them. Mr. Kilcoyne agreed that if it not on the agenda no other Board should be discussed.

Mike Rivers stated he has the same concerns about the Earth Removal Board being discussed at the Selectmen's meetings and at the Earth Removal Bylaw Committee meetings. And heard many comments that disparaged the ER Board, listened to a lot of miss-statements, misleading information.

Mr. Rivers mentioned that there is only one Board (the Board of Selectmen) who have a policy that any Board that is on the Board of Selectmen's agenda will be invited to their meeting. The Board of Selectmen would repeatedly discuss the ER Board at their meetings without their being invited. Ironically the two times they were invited, and showed up, the agenda item had been cancelled without any prior notice.

Ms. Patty Page asked that we get back to the agenda items as this was not relevant to the agenda. She further stated that in her opinion this was not a violation of the Open Meeting Law and that the phrase that Mr. Philpot was reading only applied to Executive Session.

Mr. Santoro stated it was as the Board was discussing the Open Meeting Law.

Mr. Philpot clarified that there are nine or ten reasons to go into Executive Session. The first one is to discuss the character, reputation of an individual. If you wish to discuss the character or reputation of an individual you must go into Executive Session. Anyone who says otherwise either doesn't know the OML or is trying to mislead you.

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Joe Curtin stated he was at the Selectmen's meeting on February 6, 2019. He attended the meeting primarily for an update of what was happening with the Earth Removal Bylaw. His concern was that the work that had been done on the Bylaw by the ER Board, Planning Board and ZBA would get lost. From what he heard that night it didn't seem as though it was going to cover all the things that had been kicked around by the three Boards and he was concerned.

As a citizen, it appears to Mr. Rivers that the Board of Selectmen are somewhat overstepping their boundaries and getting into to your arena or vice versa and he thinks it needs to pull the reigns back a little bit. Like Ms. Cranson stated everyone is working towards the common good but now are fighting amongst ourselves and it is not good for anyone. From his observation whether it be the Master Plan or this Bylaw, certain individuals or Boards are overstepping their authority. He thinks there is misunderstanding or not knowing the law. He thinks if people pull back a little bit it will be good for the betterment of everyone.

Mr. Kilcoyne stated he would be brief. He would like everyone in this room to respect each other. In his opinion they are not overstepping their bounds. Like every Board they make mistakes. He doesn't profess to know every Bylaw and every policy they have. What he does know is that this Bylaw has been on the table and it is transparent and it is going to continue that way. Nothing has been taken off the table that the ER Board/Planning Board/ZBA has put together. There have been some modifications. We have invited the Planning Board and the other committees to join the Review Committee. Nobody is taking anything off the table and no one has disrespected any committee members along the way. No one is hiding anything. All minutes are available for anyone's review.

Mr. Santoro feels there is a huge disconnect from all the Boards and Departments. We all have to be on the same page and he doesn't think we are.

Mr. Shapiro stated that he feels slighted by many of the comments that were made at the BOS meeting and he believes that an apology in kind is appropriate because I consider myself to be ethical and transparent, I ran on the attempt to try communication building, due to personal reasons I have not been able to attend the Master Plan Committee meetings. But when you go back, I asked the Selectmen what was the Charge of this Committee but was never given an answer. For a future agenda item should be to establish a Charge for the Master Plan Committee.

Mr. Philpot stated under the rules of the Open Meeting Law, you have thirty days to file a complaint. We will have one more meeting before the deadline. Perhaps, Mr. Miller could view the video and perhaps have an appreciation for what he and Mr. Santoro feel and then when we meet on February 27<sup>th</sup>, we can make a decision. In the meantime, if the Board of Selectmen want to take action, then that could perhaps remove us from a difficult decision. Mr. Philpot believed everything John Kilcoyne said a few minutes ago. If everything he said is true then you have to wonder why his fellow Selectman said what he did. The two people on that working group told him they wanted to avoid public scrutiny. I do not believe that anyone is trying to hide anything.

Roseann Mapp just wanted to say one thing that she is not on any kind of payroll with the Town. She is not an elected official, she volunteers her time and she volunteers a lot of her time so

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brining money into this is kind of ridiculous. Mr. Santoro stated that it is not as the Planning Board is one of the lowest paid Boards. Ms. Mapp said it offends her. She stated that she comes to these meetings and she hears a lot of people complaining about a lot of people including this meeting tonight and other meetings she has been to not just in this room. She just wants to see her taxpayer money going towards people who want to work together and communicate. If you step on somebody's toes speak it. Speak it with respect, speak it with honor. The people in this building who are paid to be in this building work for the taxpayers. Let's not loose site of the goal here. It's not about us it's for the Town and what is best for the Town. I think we need to take our personalities out of this a little bit and if you do have problem with somebody, go address them and say hey what did you mean by that.

Mr. Santoro thanked her for her comments. As a taxpayer in this Town, he joined this Board because he wanted to make Sterling a better place to live. When he used to come to the Planning Board meetings, he was talked down to as if he was someone with a fifth grade education and he took offense to it. He feels that everyone wants to make a difference. He thinks the problem in this building is there is no communication from anyone.

Mr. Santoro stated that he felt everyone on this Board has the same goal it's just a question of how you get there. The only thing that he disagrees with Ms. Mapp on is you have a problem with someone you talk to them. The problem is if you have a problem with someone and you talk to them about it you break all the rules of HR.

Mr. Philpot stated the discussion was about the Open Meeting Law. He finds it rather humorous that the discussion now is some sort of individual communications and you are having that discussion with an individual who wrote a letter of complaint that there was no control at our meetings, that people were allowed to say whatever they wanted and the reality is that when you go back and look at that tape. The point is this just too rich, I think that we should just move on. Mr. Santoro stated he did not mention the authors of any letters for a reason and he is going to leave it at that.

Mr. Shapiro moved to table this agenda item until the next meeting. Mr. Philpot seconded the motion. The motion passed unanimously.

Ms. Kazan stated that she totally agreed with Ms. Mapp that if you have an issue or concerns with someone that you should address it with the individual and speak your opinion.

### **Planning Board Accomplishments/Goals/Issues**

Ms. Kazan reminded the Board that at their last meeting they discussed coming up with ideas for their goals and have this as an agenda item for the February 27<sup>th</sup> meeting.

Mr. Santoro stated that when Mr. Pineo went to the all Boards meeting he mentioned that the Board was looking into going paperless, working on policies and bylaws, cleaning up Site Plans and projects.

Mr. Philpot stated that the Board has:



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Formalized our ANR process which has been very helpful in speeding things through. Now people are in and out usually in one meeting. In the past people would be coming back three and four times.

The Board was distracted with Marijuana articles and had to hold three public hearings.

Site Plans and Review Fees have been cleaned up and in some instances closed out.

The good news is this Board has approved a number of site plans for substantial buildings and he feels this will continue.

Word on the street now is Business is Welcome in Sterling.

Moving forward we need to look at the Subdivision Rules & Regulations. We hope to build bridges with other departments. This Board met with the DPW a number of years ago regarding catch basins and the previous Board ignored them. We will be inviting the DPW in for more conversation when we get to the point of changing the R & R.

Stormwater Management – We will have to be meeting with Conservation Commission to come up with Rules & Regulations on this subject. This may involve the DPW as well. The point is the current Board will work with other Town Departments and Boards cooperatively.

Then we will start looking at zoning issues, for him the economy is the most important thing. Non-residential tax revenue. If the Board can find relief to the residential taxpayer we should take advantage of this. This will be a lot of work but Mr. Philpot feels it is well worth the effort. We had discussed this with the Town Planner at their last meeting but he was a little disappointed in her resistance as she did not want to engage this idea. However, this is an element of the Master Plan and there's no reason the Board can't move forward with it. It is our statutory authority and we should do it. This is what he sees as goals.

Mr. Santoro stated that the new Saint Vincent's (Chacharone Properties) opened on Monday. They have a temporary occupancy permit (just for downstairs). They opened on Monday.

Joe Curtin suggested that one of the Boards goals might be to look at the aquafer Protection District Map as the Planning Board has the control over this map. He mentioned that he had a lot of background data which he had given the Town Planner for the mapping of the Aquafer Protection Map.

### **Open and expiring Site Plans and Occupancy Permits**

Mr. Santoro indicated that the Saint Vincent's (Chacharone Properties) they have a temporary Occupancy Permit for downstairs only. This was confirmed with Patty Page of the Building Department. John stated he spoke with Sarah Culgin and she stated it was within her purview to issue temporary occupancy permits.

Board Members were concerned about being notified when Occupancy permits are issued. Ms. Kazan suggested the Board draft a letter to the Building Commissioner requesting notification of Occupancy Permits being issued.

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Mr. Kilcoyne suggested that Mr. Santoro go to through Town Administrator and work something out.

### **Future Agenda Items**

Mr. Shapiro requested that there be a future agenda item for Economic Development for Non-residential tax revenue.

### **8:52 P.M. MOTION TO ADJOURN**

Mr. Shapiro moved that the Board adjourn. Mr. Miller seconded the motion. The motion passed unanimously.

### **APPROVED BY:**

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